MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 4442 OF 1996

BANK OF MAHARASHTRA .. PLAINTIFFS

Vs.

M/s. RELIANCE ELECTRONIC & ORS... DEFENDANTS

Mr. K. D. Shukla for plaintiffs

None for the defendants

CORAM: SMT. RANJANA DESAI, J.

DATED: OCTOBER 4, 2007.

P.C.

. This suit is placed before me under the caption "Undefended Suits for Exparte Decree". The plaintiffs have filed this suit inter alia for an order directing the defendants jointly and severally to pay to the plaintiffs a sum of Rs.8,57,749-29 as per the particulars of claim being Exhibit 'K' annexed to the plaint with interest thereon @ 17.25% per annum with quarterly rests from 1st October, 1996 till payment or realisation.

2. Affidavit in lieu of Examination-in-Chief is

filed on behalf of the plaintiffs by Mr. Bhanudas Madhavrao Kolgatram, Branch Manager of the plaintiffs, Borivali (West) Branch, Mumbai. The said affidavit is marked "X".

3. The plaintiffs have also filed compilation of documents on which the plaintiffs have placed reliance. All the documents are xerox copies of original documents as original documents are not traceable despite efforts being made to trace them. It is prayed in the affidavit that the plaintiffs be allowed to lead secondary evidence of the documents on which the plaintiffs have placed reliance.

4. My attention is drawn to order dated 23/6/97 passed by this court. It appears that Minutes of Order were drawn by consent under which the defendants had agreed to pay quarterly installments of Rs.50,000/- to the plaintiffs. On 23/6/97 ad-interim order of the same date was passed in terms of the Minutes of Consent Order duly signed by the advocates and respective parties which were taken on record and marked "X". On 15/12/97 ad-interim order dated 23/6/97 was confirmed. Therefore, it is clear that the defendants have

admitted their liability. The defendants have however, committed breach of the order dated

23/6/97, confirmed on 15/12/97. In the circumstances permission is granted to the plaintiffs to lead secondary evidence in respect of the documents on which the plaintiffs have placed reliance. List of documents along with xerox copies of the documents are, therefore, taken on record and marked "Y" Collectively.

5. The case of the plaintiffs as is evident from the plaint and affidavit in lieu of examination-in-chief is that the plaintiffs are a Body Corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The plaintiffs are carrying on business as bankers. Defendant 1 is a partnership firm and defendants 2 and 3 are the partners of defendant 1 and are sued as borrowers. Defendants 4 and 5 are sued as the guarantors.

6. Shri Kolgatram, Branch Manager of the plaintiffs is present in the court. He has confirmed the contents of the plaint and the affidavit in lieu of examination-in-chief and the

documents.

7. According to the plaintiffs case since 1992 the defendants have been availing of various credit facilities from the plaintiffs. In 1992 at the request of the defendants, the plaintiffs granted to the defendants cash credit facility of Rs.4 lakhs. In respect thereof the 2nd and 3rd defendants executed a demand promissory note dated 20/1/92 whereby they promised to pay to the plaintiffs a sum of Rs.4,00,000/- together with interest @ 22.25% per annum with quarterly rests. The said demand promissory note is tendered in the court. It is marked Exh. "1".

8. An agreement of Hypothecation of goods to secure cash credit facilities dated 20/1/92, was executed in favour of the plaintiffs whereunder the defendants hypothecated all the moveables set out therein on the terms and conditions mentioned therein. Copy of the said agreement is tendered in evidence. It is marked Exh. "2".

9. Defendant 5 as Guarantor executed a Letter of Guarantee dated 20/1/92 on terms set out therein in

favour of the plaintiffs. It is tendered in the court and is marked Exh. "3".

10. According to the plaintiffs, the defendants renewed the aforesaid security documents in the year 1995 by executing the following security documents in favour of the plaintiffs to secure the amount due and payable by the defendants to the plaintiffs in respect of the said Cash Credit Hypothecation A/c.

a) An On Demand Promissory Note dated 12/9/95 for Rs.4,50,000/- whereby the defendants promised to pay to the plaintiffs a sum of Rs.4,50,000/- with interest at the rate of 17.25% per annum with quarterly rests. It is tendered in evidence. It is marked Exh."4".

b) Letter of Lien & Set Off dated 12/9/95 executed by the defendants on the terms and conditions mentioned therein. It is tendered in evidence. It is marked Exh."5".

c) Agreement of hypothecation of Goods to secure cash credit facility dated 8/10/92 for Rs.4.50 lakhs whereunder the defendants had hypothecated

all their moveables, stock, machinery etc. in favour of the plaintiffs on the terms and conditions set out thereunder. It is marked Exh. "6".

11. It is the case of the plaintiffs that defendants 4 and 5 also executed a Letter of Guarantee dated 8/10/92 in favour of the plaintiffs. Thereby defendants 4 and 5 guaranteed the repayment of the amount to the plaintiffs due and payable by defendant No. 1 under the said cash credit facility on the terms and conditions set out therein. The said guarantee is in the nature of continuing guarantee. It is tendered in evidence. It is marked Exh. "7".

12. The plaintiffs state that the defendants duly admitted and confirmed their liability by executing Letter of Acknowledgement of Liability in favour of the plaintiffs dated 12/9/95. The said letter is tendered in evidence. It is marked Exh. "8".

13. According to the plaintiffs the defendants by their various letters admitted their liability under the said facilities availed of by them and promised that they would adjust and pay entire

outstanding amount under the said accounts. However, the defendants inspite of such assurances and promises failed and neglected to repay the said outstanding amount.

14. According to the plaintiffs ultimately by their advocate's letter dated 14/1/95 they placed on record some of the aforesaid facts and called upon the defendants to comply with the requisitions contained therein which the defendants have failed and neglected to do. The plaintiffs again by their letter dated 11th April, 1996 placed the correct facts on record and called upon the defendants to repay the entire outstanding amounts. The plaintiffs state that defendants have failed and neglected to comply with the said letter. They have not even sent reply to the said letter. Copies of letters dated 14/1/95 and 11/4/96 are on record. They are marked as Exh. 9 and 10 respectively.

15. According to the plaintiffs defendant 1 duly availed of the said credit facility. The plaintiffs have maintained an account in respect of the said facility whereunder the plaintiffs have duly debited the amounts lent and advanced from

time to time and also debited the interest from time to time payable by the defendants. The plaintiffs have also credited the amounts deposited by the defendants from time to time.

16. Under these circumstances it is the case of the plaintiffs that there is now due and payable by the defendants to the plaintiffs a sum of Rs.8,57,749-29 as on 30/9/96 as per the particulars of claim annexed to the plaint as Exh.K with further interest thereon at the rate of 17.12% p.a. with quarterly rests from 1/10/96 till payment and/or realisation.

17. The defendants have been served. The defendants have not contested the suit. The defendants have not filed written statement.

18. Having perused the plaint, affidavit in lieu of examination-in-chief, the contents of which have been confirmed by Mr. Bhanudas Madhavrao Kolgatram, the Branch Manager of the plaintiffs, who is present in the court and having perused the documents on which the plaintiffs have placed reliance, in my opinion, the plaintiffs are entitled to a decree in terms of prayer clause (a)

with modification as regards the rate of interest from the date of decree till realisation. Hence there shall be a decree in terms of prayer clause (a) with a modification that the plaintiffs shall be entitled to interest @ 10% per annum from the date of the decree till realisation instead of @ 17.25% per annum with quarterly rest. There shall also be a decree in terms of prayer clauses (b), (c) and (h).

19. Suit is decreed in the aforestated terms and is disposed of.

20. Receiver to continue for a period of six months.

JUDGE.